

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL O'CONNELL,
Plaintiff,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,
Defendant.

Case No. 14-cv-02880-HSG

ORDER DISMISSING CASE

Michael O'Connell filed a qui tam suit under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, against the Regents of the University of California ("Defendant" or "Regents"). In his amended complaint, O'Connell alleges that Defendant made "knowingly false records or statements material to an obligation to pay or transmit money to the U.S. Department of Energy" and "knowingly present[ed] false claims for payment or approval to the Department of Energy." Dkt. No. 18.

On June 10, 2015, the United States Attorney for the Northern District of California declined to intervene and suggested that the Court issue an order to show cause ("OSC") why the action should not be dismissed in view of *Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765 (2000). The Court issued the OSC on June 11, 2015, Dkt. No. 17, and O'Connell responded on August 7. Dkt. No. 19.

Having reviewed O'Connell's complaint and OSC response, the Court finds that this action must be dismissed as a matter of law. While "a private individual has standing to bring suit in federal court on behalf of the United States" under the False Claims Act, a state or state agency cannot be subject to liability in such actions. *Stevens*, 529 U.S. at 787-88 (citation omitted). The Ninth Circuit has held that the Regents are a state entity. *See Donald v. Univ. of Ca. Bd. of Regents*, 329 F.3d 1040, 1044 (9th Cir. 2003); *Armstrong v. Meyers*, 964 F.2d 948, 949-50 (9th

1 Cir. 1992) (“The Regents, a corporation created by the California constitution, is an arm of the
2 state for Eleventh Amendment purposes, and therefore is not a ‘person’ within the meaning of
3 section 1983.”); *Doe v. Lawrence Livermore Nat’l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997)
4 (holding that Regents act as an arm of the state when managing Livermore Laboratory). Because
5 Defendant is a state entity, the False Claims Act does not provide for a private right of action.

6 Accordingly, the case is **DISMISSED** with prejudice as to O’Connell. The Clerk is
7 directed to close the file.

8 **IT IS SO ORDERED.**

9 Dated: 12/2/2015

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12 HAYWOOD S. GILLIAM, JR.
13 United States District Judge
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